

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

VANDERBILT UNIVERSITY,)	
)	
<i>Plaintiff,</i>)	
)	Case No. 3:18-CV-00046
v.)	
)	Chief Judge Crenshaw
SCHOLASTIC, INC.; HOUGHTON MIFFLIN)	Magistrate Judge Frensley
HARCOURT PUBLISHING COMPANY; and)	
TED S. HASSELBRING,)	Jury Demand
)	
<i>Defendants.</i>)	
_____)	
SCHOLASTIC, INC.,)	
)	
<i>Counterclaim-Plaintiff,</i>)	
)	
v.)	
)	
VANDERBILT UNIVERSITY,)	
)	
<i>Counterclaim-Defendant.</i>)	
_____)	

DEFENDANTS' MOTION IN LIMINE TO EXCLUDE EXPERT TESTIMONY

Defendants Scholastic Inc. ("Scholastic"), Houghton Mifflin Harcourt Publishing Company ("HMH"), and Ted S. Hasselbring ("Hasselbring" and, collectively, "Defendants"), respectfully move *in limine* to limit Vanderbilt's experts' testimony at trial to exclude any opinions raised in the rebuttal expert reports served by Plaintiff Vanderbilt University ("Vanderbilt") on October 26, 2020 (the "Rebuttal Reports"), pursuant to Fed. R. Civ. P. 37(c)(1).

As is explained in more detail in the accompanying memorandum of law in support of this motion, on October 26, 2020, Vanderbilt served four Rebuttal Reports. Service of these

Rebuttal Reports is a violation of the Court's Case Management Order (Dkt No. 93 (the "CMO")), which set a single deadline for Vanderbilt's expert reports and did not provide for rebuttal except with "leave of court." It also violates Local Rule 39.01(c)(5)(C), which provides that, "[e]xpert witness disclosures must be made timely in accordance with any order of the Court [i.e., the CMO]," and is in conflict with Local Rule 39.01(c)(5)(D) provides that "[n]o rebuttal expert witnesses shall be permitted at trial, absent timely disclosure in accordance with these rules and leave of Court." This failure to comply with the CMO was not substantially justified, and it harmed Defendants. Finally, although purporting to be rebuttal, the Rebuttal Reports are not actually proper rebuttal or supplemental reports, as they improperly either raise new theories or try to bolster Vanderbilt's experts' initial theories by reference to evidence that was available to them at the time Vanderbilt served its initial reports. For these reasons, Vanderbilt's experts' testimony at trial should be limited to exclude any opinions raised in the Rebuttal Reports.

This motion is further supported by Exhibits A through R to the Declaration of Edward H. Rosenthal filed herewith.

In compliance with Local Rule 7.01(a), the parties have conferred in good faith in an attempt to resolve the issues that are the subject of this motion. Vanderbilt is opposed to the underlying relief sought.

Dated: Nashville, Tennessee
November 10, 2020

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Dated: New York, New York
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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2020, true and correct copies of the foregoing Defendants' Motion In Limine To Exclude Expert Testimony were served by operation of the Court's CM/ECF system upon the following:

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/s/ Thor Y. Urness
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